Volume 17 | Number 5

Article 2

3-3-2006

Cases, Regulations, and Statutes

Robert P. Achenbach Jr
Iowa State University

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ANIMALS

WARRANTLESS SEARCH. The defendant was convicted of cruelty to a dog for failure to provide adequate food, shelter and medical care. The dog was discovered by a sheriff's deputy when the deputy visited the defendant's house to inquire about the dog after hearing about the dog's condition from the dog's former owner. The deputy could see the dog from the sidewalk leading to the defendant's back door. The defendant sought to exclude the evidence from the deputy's testimony because the deputy did not have a warrant to search the defendant's house. The defendant argued that the dog house was within the curtilage of the residence for which the defendant had a right of privacy from warrantless searches. The court held that, although the dog house was within the home curtilage, the defendant had no expectation of privacy for the dog house which was open to view from a place where visitors would be expected to pass. **Trimble v. State of Indiana, 2006 Ind. LEXIS 137 (Ind. 2006)**.

BANKRUPTCY

GENERAL

EXEMPTIONS

HOMESTEAD. In July 2000, 1773 days before filing a Chapter 7 petition, the debtors purchased a residence. The debtors listed the property as an exempt homestead with equity of $688,606. the debtors had made payments on the home mortgage up to the filing of the petition. A creditor objected to the exemption to the extent of the increase in equity in the homestead above $125,000 during the 1215 days before the filing of the petition. Under Section 522(p), added by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, the exemption for interests in a homestead acquired within 1215 days before the petition is limited to $125,000. The issue here is whether payments on an existing mortgage are included in the definition of "interests in a homestead" such that mortgage payments made during the 1215 days are subject to the $125,000 limitation. The court held that the limitation did not apply to property acquired before the 1215 day period because the "interest" in the property was the title to the property, not the equity which increased with additional payments on the mortgage. ***In re*** **Blair, 334 B.R. 374 (Bankr. N.D. Tex. 2005)**.

FEDERAL TAX

REFUNDS. The debtor filed for Chapter 7 in January 2005 and included tax claims for 1998, 1999, and 2000. The debtor filed the 2004 income tax return later in that same month. The 2004 return included a claim for a refund and the debtor listed the refund as exempt property. The IRS refused to pay the refund claim and used the refund to offset the tax claims. The debtor argued that the refund claim did not arise until the income tax return was filed, making the refund claim a post-petition claim, lacking mutuality with the pre-petition tax claims. The court held that the refund claim arose on December 31, 2004 and not when the income tax return was filed; therefore, the refund claim and tax claims existed pre-petition and the IRS had the right to set off the refund against the tax claims and was not required to pay the refund. ***In re*** **Beaucage, 334 B.R. 353 (Bankr. D. Mass. 2005)**.

FEDERAL AGRICULTURAL PROGRAMS

FARM LABOR. The National Agricultural Statistics Service has issued farm employment figures as of February 17, 2006. There were 796,000 hired workers on the nation's farms and ranches the week of January 8-14, 2006, up 3 percent from a year ago. Of these hired workers, 616,000 workers were hired directly by farm operators. Agricultural service employees on farms and ranches made up the remaining 180,000 workers. Farm operators paid their hired workers an average wage of $10.11 per hour during the January 2006 reference week, up 33 cents from a year earlier. Field workers received an average of $9.15 per hour, up 44 cents from January 2005, while livestock workers earned $9.25 per hour compared with $9.20 a year earlier. The field and livestock worker combined wage rate, at $9.19 per hour, was up 29 cents from last year. The number of hours worked averaged 38.2 hours for hired workers during the survey week, up 3 percent from a year ago. All NASS reports are available free of charge on the internet. For access, go to the NASS Home Page at: http:/www.usda.gov/nass/. **Sp Sy 8 (2-06).**

FEDERAL ESTATE AND GIFT TAXATION

EQUITABLE RECOUPMENT. The decedent had received property in trust from the estate of a predeceased spouse. The predeceased spouse's estate had claimed a deduction for the trust as QTIP. In litigation over another estate tax issue, the IRS attempted to raise the issue that the trust was not QTIP and the deduction was improperly claimed. The IRS claim was denied as untimely raised. The decedent died 16 years later and the trust property was included in the decedent's estate. The estate later filed an amended return claiming that, because the trust was not QTIP and should not have been allowed as a marital deduction, the trust was not property of the decedent's estate. The IRS invoked the doctrine of equitable recoupment to argue that any refund should be reduced by the amount of estate taxes which would have been paid had the trust not been allowed as a marital deduction. The IRS also sought to include interest on the unpaid estate taxes as part of the recoupment. The court held that the IRS was entitled to offset the refund by the amount of tax which would have been due from the predeceased spouse's estate but denied the IRS any interest because the recoupment was not a "tax due" but involved only an equitable offset to prrevent unjust enrichment. **Estate of Buder v. United States, 2006-1 U.S. Tax Cas. (CCH) ¶ 60,518 (8th Cir. 2006),** ***aff'g*****, 372 F. Supp. 2d 1145 (E.D. Mo. 2005)**.

GENERATION-SKIPPING TRANSFERS. Prior to September 25, 1985, the taxpayer had created nine irrevocable trusts for the taxpayer's children and grandchildren. The taxpayer established nine new trusts and transferred the assets of the original trusts to the new trusts. The new trusts had various administrative changes, including (1) making the new trusts subject to the laws of another state; (2) changing the rules relating to corporate and individual trustees (including the appointment of a new corporate trustee); and (3) providing that no individual who is both a trustee and a beneficiary can participate in trustee decisions regarding discretionary distributions, trust terminations, or exercising incidents of ownership over certain life insurance policies held by the trust. No changes were made as to the beneficiaries' rights to trust income or principal and no additions were made to the trust principal in any of the trusts. The IRS ruled that the administrative changes and transfer of assets did not cause any of the trusts to become subject to generation-skipping transfer tax. **Ltr. Rul. 200607015, Nov. 4, 2005**.

RETURNS. The IRS has announced simpler procedures for decedent's estates and gift taxpayers to file for an automatic six-month extension of time to file returns. The request for extension of filing estate tax returns is made on Form 4768, Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes. The request for extension of filing gift tax returns is made on Form 8892, Payment of Gift/GST Tax and/or Application of Extension of Time to File Form 709. **IR-2006-29.**

TRUSTS. The taxpayer established an inter vivos irrevocable trust for the benefit of the taxpayer's spouse and funded the trust with cash and marketable securities. The trust allowed the taxpayer to withdraw trust property and substitute property of equal value, exercised in a fiduciary capacity in the best interests of the trust. The taxpayer withdrew publicly-traded stock from the trust and substituted other publicly-traded stock of equal market value. The IRS ruled that the transfer would not cause the trust property to be included in the taxpayer's estate and did not result in a taxable gift to the trust. **Ltr. Rul. 200606006, Oct. 24, 2005**.

The taxpayer had created a trust for the benefit of the taxpayer's children and funded the trust with two life insurance policies on the taxpayer's life. The taxpayer also created a trust for the benefit of the taxpayer's grandchildren and funded that trust with two other life insurance policies on the taxpayer's life. The trust exchanged the two sets of life insurance policies with the difference in values made up with cash and other assets so that the exchanged property totaled an equal value. The IRS ruled that, under *Rev. Rul. 85-13, 1985-1 C.B. 184*, the exchange would be disregarded for federal income tax purposes. **Ltr. Rul. 200606027, Nov. 9, 2005**.

FEDERAL INCOME TAXATION

DISABLED ACCESS CREDIT. The taxpayers, husband and wife, were both employed but the husband was employed by a wholly-owned S corporation. The corporation subscribed to a computer service which allowed hearing-impaired people to call them without using the free TTY service provided by all telephone companies. Under the subscription, the corporation provided referrals to other potential customers to the service in exchange for a rebate of a portion of the subscription cost. The corporation claimed a tax credit under I.R.C. § 44, arguing that the computer telephone service was obtained in order to comply with the Americans with Disability Act. The court held that the credit was not allowed because the computer telephone system was not required in order to comply with the ADA since all public telephone services are already required to provide telephone service for hearing-impaired individuals without extra charge. **Galyen v. Comm'r, T.C. Memo. 2006-30**.

DISASTER LOSSES. On January 20, 2006, the president determined that certain areas in South Carolina are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of a severe ice storm, which began on December 15, 2005. **FEMA-1625-DR**. On January 26, 2006, the president determined that certain areas in Kansas are eligible for assistance from the government under the Act as a result of a severe winter storm, which began on November 27, 2005. **FEMA-1626-DR**. On January 26, 2006, the president determined that certain areas in Nebraska are eligible for assistance from the government under the Act as a result of a severe winter storm, which began on November 27, 2005. **FEMA-1627-DR**. Taxpayers who sustained losses attributable to the disaster may deduct the losses on their 2004 returns.

The IRS has postponed until October 16, 2006, the deadline to make an election to deduct losses attributable to Hurricanes Katrina, Rita or Wilma in a taxpayer's preceding tax year. This extra six-month period applies only to such losses sustained in presidentially declared disaster areas in Alabama, Florida, Louisiana, Mississippi and Texas. Neither Notice 2006-17 detailing the postponement nor the recent news release that announced this relief, see *IR-2006-27*, changes the regular tax-filing deadline. Taxpayers making this election should mark *in red ink* at the top of the return, amended return or refund claim on which they are making the election either "Hurricane Katrina," "Hurricane Rita" or "Hurricane Wilma," as appropriate. **Notice 2006-17, I.R.B. 2006-10**.

DISCHARGE OF INDEBTEDNESS. The taxpayers, husband and wife, borrowed money for several businesses and renegotiated the loans with the FDIC, resulting in a cash payment and forgiveness of the balance of the loans. The taxpayers owned real property at the time and the property was appraised as part of the debt renegotiation, although none of the real property was transferred to satisfy any of the debt. The taxpayers reported the discharge of indebtedness income but excluded a portion to the extent the taxpayers were insolvent before the debt was forgiven. The IRS challenged the value of the real property and claimed that it was higher such that the taxpayers were not insolvent before the debt was forgiven. The court upheld the taxpayers' valuation of the property based on the appraisals. The court also held that the discharge of indebtedness income was ordinary income, and not capital income, because no property was transferred in satisfaction of the debt. **United States v. Davenport, 2006-1 U.S. Tax Cas. (CCH) ¶ 50,167 (W.D. Okla. 2005)**.

A corporation had issued convertible preferred securities (CPS) which gave the holder the right to convert the CPS to common stock at any time at the current value of the stock. The corporation encountered financial difficulty and offered the CPS holders the option to convert the CPSs to common stock. Many of the CPS holders did convert to common stock at a time when the stock was valued at less than the CPSs. The taxpayer argued that no discharge of indebtedness occurred because the CPSs were converted according to the terms of the securities' agreements. The IRS ruled that the conversion of a convertible security to stock of a lesser value did result in discharge of indebtedness income. **TAM Ltr. Rul. 200606037, Oct. 27, 2005**.

EMPLOYEE EXPENSES. The taxpayer was an employee of a company and agreed to perform services without compensation for several years while products were being developed. The taxpayer, however, did receive reimbursement payments for expenses incurred for the benefit of the company. The court found that the taxpayer did substantiate all expenses but that the taxpayer received excess reimbursements which were not required to be repaid; therefore, the court held that the reimbursement payments did not qualify as made under a plan or arrangement under Treas. Reg. § 1.62-2, was not paid under an accountable plan and had to be included in income. **Namyst v. Comm'r, 2006-1 U.S. Tax Cas. (CCH) ¶ 50,163 (8th Cir. 2006), *aff'g*, T.C. Memo. 2004-263**.

The taxpayer operated a day-care facility and the taxpayer's spouse was employed full-time as a machinist. The taxpayer signed an employment agreement with the spouse to work 12.5 hours per week at the day-care after the spouse finished work each day. The spouse helped supervise the children, perform maintenance work and repairs for the day-care operation. The spouse received employer-reimbursed medical benefits under a Section 105(b) plan. The IRS denied deductions for the costs of the plan, arguing that the spouse was not a bona fide employee. The court held that the taxpayer had provided sufficient written evidence of the employer-employee relationship to qualify for the deduction of the medical reimbursement plan expenses. **Speltz v. Comm'r, T.C. Summary Op. 2006-25**.

ENERGY-EFFICIENT HOME CREDIT. The IRS has issued procedures for builders who construct or manufacture new homes, to obtain certification that those units are eligible for the energy-efficient homes credit under I.R.C. § 45L. Under this provision, enacted as part of the Energy Policy Act of 2005, Pub. L. No. 109-58, a contractor who constructs a qualified new energy-efficient home may qualify for a credit of up to $2,000. The credit is available for all new homes, including manufactured homes, that comply with federal standards. The home qualifies for the credit if it is: (1) located in the United States; (2) substantially constructed after August 8, 2005; and (3) acquired for use as a residence from the contractor after December 31, 2005, and before January 1, 2008. **Notice 2006-27 and Notice 2006-28, I.R.B. 2006-11**.

ENVIRONMENTAL CLEAN-UP COSTS. The taxpayer was an aluminum manufacturer whose manufacturing process from 1940 to 1987 had created environmental hazards on the manufacturing property. In 1993 the taxpayer was required to pay for the remediation of the property to clean up the environmental hazards. From 1940 to 1987, the taxpayer included the waste disposal costs in its cost of goods sold and argued that had the environmental remediation costs occurred in those years, the cost of goods would have been higher. In addition, the taxpayer argued that, because the tax rates in those years were higher than the tax rates in 1993, the tax benefit of the higher deduction rates was lost in deducting the remediation costs under the 1993 rates. The taxpayer claimed that I.R.C. § 1341 allowed the taxpayer to use the tax rates of the 1940-1987 period in determining the deduction for the 1993 remediation costs. The court held that I.R.C. § 1341 did not apply because the taxpayer did not restore to a rightful owner an item of income received in the tax years at issue. **Alcoa, Inc. v. United States, 2006-2 U.S. Tax Cas. (CCH) ¶ 50,166 (W.D. Penn. 2005)**.

HOBBY LOSSES. The taxpayer was self-employed as a full time chiropractor and purchased a 115 acre farm used to breed and train horses. The horses were used primarily by the taxpayer's family for pleasure riding, although some horses were sold for a small gain. The court held that the farm was not operated with an intent to make a profit because (1) the taxpayer did not keep accurate records of the income and expenses of the horse operation, (2) no attempt was made to analyze the operation to make it profitable, (3) no separate bank account was maintained for the horse operation, (4) the taxpayer had little experience in the horse business and did not seek expert advice, (5) the losses offset income from other sources and (6) the taxpayer and family used the horses for recreation and personal use. The appellate court affirmed in a decision designated as not for publication. **Montagne v. Comm'r, 2006-1 U.S. Tax Cas. (CCH) ¶ 50,158 (8th Cir. 2006), *aff'g*, T.C. Memo. 2004-252**.

HOME OFFICE. The taxpayer was self-employed as an interior designer and claimed a deduction for a portion of the rent paid by the taxpayer for an apartment which was also used as the taxpayer's residence. The total of home office deductions exceeded the gross income from the interior design business and the IRS disallowed the portion of the expenses in excess of the income, as provided by I.R.C. § 280A(c)(5). The taxpayer argued that the Section 280A(c)(5) limitation did not apply to rent expense. The court disagreed, holding that the Section 280A(c)(5) limitation applied to expenses associated with a residence and the taxpayer's apartment was used by the taxpayer as a residence. The court noted that the amount of disallowed expense could be carried over to the next tax year. The appellate court affirmed in a decision designated as not for publication. **Visin v. Comm'r, 2006-1 U.S. Tax Cas. (CCH) ¶ 50,199 (9th Cir. 2006), *aff'g*, T.C. Memo. 2003-246**.

INFORMATION REPORTING. The taxpayer was a debt purchasing association which purchased debts from banks and other lenders. The taxpayer's business was to attempt to collect the debts and sometimes settle the debts for less than the full amount owed. The taxpayer filed suit to challenge Treas. Reg. § 1.6050P-2(e) which requires reporting of discharge of indebtedness by lenders. The taxpayer argued that it should not be governed by the regulation because the taxpayer was not a lender and did not have access to information about the underlying debt, interest or penalties that may be included in the collectible amount. The court held that the suit was barred by the Anti-Injunction Act because the issue involved the collection of taxes and penalties. **Debt Buyers' Ass'n v. Snow, 2006-1 U.S. Tax Cas. (CCH) ¶ 50,177 (D. D.C. 2006)**.

INTERAGENCY SHARING OF TAXPAYER INFORMATION. The IRS has adopted as final regulations governing the sharing of income tax return information with the Department of Agriculture for the purpose of conducting the Census of Agriculture. Disclosures may be made only to qualifying USDA officers and only from Forms 1040 and 943. **71 Fed. Reg. 8945 (Feb. 22, 2006)**.

LOTTERY WINNINGS. The taxpayer won a state lottery and was to receive annual payments for 26 years. After eight years, the taxpayer decided to assign the remaining payments to a third party in exchange for a lump sum payment. The taxpayer characterized the lump sum as long-term capital gain. The court agreed with the holding in *United States v. Maginnis, 356 F.3d 1179 (9th Cir. 2004)*, and held that, because the original proceeds were classified as ordinary income, the lump sum payment was also ordinary income, even though received from an assignment of the right to receive the annual payments. **Lattera v. Comm'r, 2006-1 U.S. Tax Cas. (CCH) ¶ 50,165 (3d Cir. 2006), *aff'g*, T.C. Memo. 2004-216**.

REPAIRS. The taxpayer purchased a commercial building which was used as a skilled nursing facility. Some time after the purchase, the taxpayer discovered a mold problem from various leaks and ventilation problems and conducted a mold remediation project to remove the mold. The project reused much of the doors, sinks and electrical fixtures and did not alter the floor plan or structural components. The remodeling did replace drywall and some fixtures and applied new paint to the affected areas. The project also included renovation of the air conditioning and plumbing systems and replaced the entire roof and the taxpayer capitalized these costs. The IRS ruled that the mold remediation project costs were currently deductible as ordinary and necessary business expenses because (1) the mold was discovered after the purchase, (2) the project did not alter the building or adapt the building to a new use, and (3) the project did not increase the value of the building or appreciably prolong its useful life. **Ltr. Rul. 200607003, Nov. 10, 2005**.

RESIDENTIAL ENERGY PROPERTY CREDIT. The IRS has announced guidance for manufacturers of qualified energy-efficient items and homeowners on the process for certifying that purchasers of such items may claim credits on their tax returns. The announcement also includes conditions under which purchasers may rely upon a manufacturer's certification (or, in the case of certain windows, an Energy Star label) that the credit is allowable. The IRS stated that future regulations are expected to incorporate the rules contained in the guidance. The residential energy property credit (I.R.C. § 25C) was enacted as part of the Energy Policy Act of 2005, Pub. L. No. 109-58 and applies to eligible qualified energy efficiency improvements and qualified energy property placed in service after December 31, 2005, and before January 1, 2008. The maximum credit allowed for all years is $500, of which a maximum of $200 can be attributed to expenses for exterior windows. **Notice 2006-26, I.R.B. 2006-11**.

RETURNS. The IRS has announced simpler procedures for business taxpayers to file for an automatic six-month extension of time to file returns. The request for extension is made on Form 7004, Application for Automatic 6-Month Extension of Time to File Certain Business Income tax, Information and Other Returns. The form may be used by partnerships, trusts, REMICs and other non-corporate taxpayers. The Form replaces a requirement that the taxpayer request separate three-month extensions. **IR-2006-29**.

SAFE HARBOR INTEREST RATES

March 2006

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	4.58	4.53	4.50	4.49
110 percent AFR	5.04	4.98	4.95	4.93
120 percent AFR	5.51	5.44	5.40	5.38
		Mid-term		
AFR	4.51	4.46	4.44	4.42
110 percent AFR	4.97	4.91	4.88	4.86
120 percent AFR	5.42	5.35	5.31	5.29
		Long-term		
AFR	4.68	4.63	4.60	4.59
110 percent AFR	5.15	5.09	5.06	5.04
120 percent AFR	5.64	5.56	5.52	5.50

Rev. Rul. 2006-10, I.R.B. 2006-10.

TOBACCO QUOTA PAYMENTS. The American Jobs Creation Act of 2004, Pub. L. No. 108-357, terminated the tobacco marketing quota program and the related tobacco price support program. The USDA replaced those programs with a payment contract for 10 annual payments based on the amount of the quota. The IRS has announced that it will issue technical guidance for tobacco quota holders to clarify the interaction of information reporting rules and the rules governing the quota holder's computation of taxable income. In 2005 the IRS issued Notice 2005-57, *I.R.B. 2005-32*, providing guidance on the federal income tax treatment of the USDA contract payments to tobacco quota holders. Since a tobacco quota is treated as an interest in land, the contract payments are treated as proceeds from the sale of the quota. The installment method may be used to report taxable income from the sale. In the year of sale, the quota holder receives a Form 1099-S from the USDA reporting the gross sale proceeds, including payments to be received in later years. The IRS stated that quota holders have questioned whether the gross proceeds shown on Form 1099-S must be reported in the year of sale even though some payments will be received in later years. The IRS stated that the amount reported on Form 1099-S is not necessarily the amount of taxable income the quota owner should report in the year of sale. **IR-2006-35.**

TRAVEL EXPENSES. The taxpayer was an attorney with a sole practitioner office, requiring the taxpayer to use public and law school libraries for research. Although the taxpayer had access to law libraries in the taxpayer's home city, the taxpayer visited a law library in a city where the taxpayer's family lived. The taxpayer claimed a business deduction for the mileage to and from the law library. The IRS denied the deduction, arguing that the trips were primarily personal family visits. The court believed the taxpayer that the primary purpose for the travel was to visit the law library for legal research for clients; therefore, the mileage deduction was allowed. **Berge v. Comm'r, T.C. Summary Op. 2006-29**.

SECURED TRANSACTIONS

FEDERAL FARM PRODUCTS RULE. The GIPSA has approved the amendment of the Louisiana certified central filing system procedures so that the creditor, or creditor's agent, may (1) file effective financing statements without a signature of the debtor and secured party; (2) format and provide the names of individual debtor as required on the UCC-1F filing form, and in the case of an organization, use full legal names, and enter names exactly as provided by the filer; (3) use the farm number established by the Farm Service Agency of the U.S. Department of Agriculture as a reasonable description of the property as an alternative to requiring the description include the farm name or general location; and (4) amend effective financing statements in writing, signed, authorized, or otherwise authenticated by the debtor and filed within 3 months of the amendment to reflect material changes Under the rules, effective financing statements expire on either the expiration of the effective period of the statement or the filing of a notice authorized or otherwise authenticated by the creditor that the statement has expired, whichever occurs first. The rules no longer require the signature of the debtor or of the secured party for filing any effective financing statement, including continuations, assignments, partial releases, terminations, or other similar statement filed. **71 Fed. Reg. 8563 (Feb. 17, 2006)**.

CITATION UPDATES

Estate of Lurie v. Comm'r, 425 F.3d 1021 (7th Cir. 2005), *aff'g*, T.C. Memo. 2004-19 (marital deduction) see 16 *Agric. L. Dig*. 157 (2005).

IN THE NEWS

Bioterrorism Rules May Affect Hay Growers. The federal government's efforts to protect the nation's food supply will soon impact commercial hay growers. According to a Food and Drug Administration (FDA) spokesman, farmers who sell hay must comply with record-keeping requirements of the Bioterrorism Act of 2002. The mandated records include, among other things, the field that each load came from, the truck that hauled it, and names and contact information of the driver and the people who loaded and unloaded it. The buyer's name and address, and the arrival date, must also be on record. The rules are designed to enable FDA to trace any contamination problem back to its source. According to the 2002 law, they apply to "persons that manufacture, process, pack, transport, distribute, receive, hold or import food." FDA includes animal feeds in its definition of food. Feed manufacturers, grain elevators, alfalfa processors and other entities that process or store farm products must comply. While most farms are exempt, the FDA spokesman confirms that commercial hay growers are not. Operations with 11 or more full-time employees must comply by June 6 of this year; smaller operations have until Dec. 9. **eHay Weekly, Feb. 14, 2006. See www.hayandforage.com**

GENETICALLY-MODIFIED ORGANISMS. The Center for Food Safety and several other organizations and producers have filed suit in the Northern District Court for California for an injunction against the USDA implementation of non-regulated status for Roundup Ready Alfalfa. The suit claims that the USDA failed to "adequately analyze the public health, environmental, and related economic consequences of" the deregulation of the genetically-modified alfalfa. **See http://www.centerforfoodsafety.org/legal_acti.cfm**

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